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U.S. DISTRICT COURT
NO. DIST. OF CAL.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARCIANO PLATA, et al.,
Plaintiffs,

v.

ARNOLD SCHWARZENEGGER,
et al.,
Defendants.

NO. C01-1351 TEH
CLASS ACTION
ORDER

On January 8, 2007, this Court heard argument on Plaintiffs' Motion to Convene A Three Judge Panel to Limit Prison Population. At the request of the Court, the parties thereafter submitted supplemental briefs. Having carefully considered the parties' written and oral arguments and the record herein the Court shall proceed as set forth below.

A. DISCUSSION

Plaintiffs move the Court to "request the convening of a three-judge court to determine whether a prisoner release order should be entered." *See* 18 U.S.C. § 3626 (3) (A), (D). Defendants oppose the motion on the ground that the prerequisites of section 3626(3)(A) have not been satisfied in this case.

The governing language provides that a district court may request the convening of a three-judge court to consider population limits if the following requirements have been met:

(i) [the] court has previously entered an order for less intrusive relief that has failed to remedy the deprivation of the Federal right sought to be remedied through the prison release order; and (ii) the defendant has had a reasonable amount of time to comply with the previous court orders.

In the event a three-judge court is convened, it is charged with “determining whether a prisoner release order should be entered.” 18 U.S.C. § 3626(3)(D).¹ There does not appear to be any case law interpreting the relevant provisions, and it is unlikely that the drafters of the statute contemplated a section 3626(3)(A) motion arising in the context of a Receivership.

The Court is satisfied, however, having considered the statutory scheme and the record herein, that it has entered “an order for less intrusive relief that has failed to remedy the deprivation of the Federal right” sought to be remedied in this action – the lack of constitutionally adequate medical care. In particular, the Court issued remedial orders in June 2002 and September 2004 intended to address the constitutional deficiencies in the provision of medical care by the California Department of Corrections and Rehabilitation (“CDCR”).² In 2005, the Court found that gross failures still existed in virtually every aspect of the system, which it described as “broken beyond repair.” *See* Oct. 3, 2005 Findings of Fact and Conclusions of Law Re Appointment of Receiver. Further – as Defendants tacitly conceded – the CDCR was incapable of implementing the Court’s remedial orders and curing the violations. *Id.* Accordingly, the Court found that it was necessary to appoint a Receiver to assume leadership of the medical health care system and bring it into constitutional compliance. *Id.*

¹ The three-judge court shall enter a prisoner release order if, but only if, it finds by clear and convincing evidence that (1) crowding is the primary cause of the violation of a Federal right; and (2) no other relief will remedy the violation of the Federal right. 18 U.S.C. § 3626(3)(E).

² *See* June 13, 2002 Stipulation for Injunctive Relief, and September 17, 2004 Stipulated Order Re Quality of Patient Care and Staffing.

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2 The second requirement – that “the defendant has had a reasonable amount of time to
3 comply with the previous court orders” – speaks to the issue of timing. The court must
4 assess when a “reasonable period of time” has passed such that it is persuaded that the
5 remedies it has ordered will not be achieved and that invocation of a three-judge court to
6 consider population measures is the next logical step. In this case, this issue must be
7 considered in the unique context of the recently initiated Receivership which – in lieu of the
8 Defendants – is attempting to remedy the violations.

9 Defendants emphasize that the Receiver commenced his duties less than one year ago,
10 on April 17, 2006, and that simply establishing and staffing the Office of the Receiver took a
11 considerable period of time. They suggest that this Court should postpone any action on
12 Plaintiffs’ motion for potentially years, so that it can evaluate the Receiver’s progress and
13 success over time.

14 Such an approach can not be squared with the “uncontested fact that, on average, an
15 inmate in one of California’s prisons needlessly dies every six to seven days due to
16 constitutional deficiencies in the CDCR’s medical delivery system.” Oct. 3, 2005 Findings of
17 Fact and Conclusions of Law Re Appointment of Receiver at 1. Where life and death hangs
18 in the balance, courts must act to ensure that constitutional violations are cured sooner rather
19 than later.

20 It is also undisputed that overcrowding in the CDCR has reached crisis proportions.
21 In October 2006, the Governor of California issued a “Prison Overcrowding State of
22 Emergency Proclamation” which declares that the “current severe overcrowding in 29 CDCR
23 prisons has caused substantial risk to the health and safety of the men and women who work
24 inside these prisons and the inmates housed in them.” Glidden Dec., Ex. A. Nor is it
25 disputed that the overcrowding is only projected to worsen with time, *see* Glidden Dec., Ex.
26 K at 3, 22), notwithstanding whatever minor adjustments may be achieved through the
27 Governor’s plans to transfer a relatively small number of inmates to prisons in other states.
28

1 Nor do Defendants dispute that severe overcrowding has implications for the provision of
2 medical care.

3 Thus while the Court is cognizant that the Receiver has only recently begun his
4 reformation of the medical health care system, the Court is not persuaded that it is either
5 necessary or appropriate to wait years to assess the propriety of convening a three-judge
6 court. *See* Glidden Dec., Ex. Q (Receivership may require five to seven years to get system
7 up to constitutional muster). Rather, the Court concludes that the Receiver is likely to be
8 able to provide, at this point in time, at least a rough assessment of how the overcrowding
9 crisis is interfering with and/or is likely to interfere with the remedial process, and the types
10 of obstacles that it presents. Accordingly, the Court directs the Receiver to report to the
11 Court within 90 days of the date of this Order, his best assessment of the manner, and extent
12 to which, overcrowding is interfering with his ability to successfully remedy the
13 constitutional violations at issue.

14 At the same time, the Court's consideration of this matter would benefit from
15 additional information from the State as to what specific and concrete measures it is taking to
16 alleviate overcrowding in the short term. Accordingly, the Court directs the State to report to
17 the Court, within 90 days of the date of this Order, the following:

18 (1) each specific, concrete measure the State has taken, is taking, or is planning to
19 take, that is expected to result in a reduction in the number of inmates confined in state
20 prisons by March 1, 2008 (in roughly one year), and by March 1, 2009 (in roughly two
21 years), and the amount of the reduction expected to result from each such measure by March
22 1, 2008, and March 1, 2009, respectively. With respect to the transfer of inmates to out-of-
23 state institutions, the report shall also identify the number of inmates confined in out-of-state
24 facilities as of the date of the report;

25 (2) At what point in time the Governor estimates he will be able to rescind the
26 October 2006 "Prison Overcrowding State of Emergency Proclamation" and the basis for
27 this estimate; and
28

(3) the total population of inmates confined by the CDCR as of the date of the Report.

B. CONCLUSION

Accordingly, and in light of the above, this matter is continued until Monday, June 11, 2007 at 10:00 a.m at which time the Court will consider Plaintiffs' motion in light of the additional information set forth above. The parties may file a supplemental memorandum addressing the additional information provided by the Receiver and/or Defendants, or any other *new* relevant evidence or authority no later than Tuesday, May 29, 2007.

IT IS SO ORDERED.

Dated: 2/14/07


THELTON E. HENDERSON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

PLATA et al,

Plaintiff,

v.

SCHWARZENEGGER, et al,

Defendant.

Case Number: CV01-01351 TEH

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 15, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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